Mere impossibility never excuses performance of a contract, but unforeseen difficulties of performance due to domestic law, destruction of the specific subject matter of the contract, or to the death or illness of a party are sometimes defenses. 15 HARV. L. REV. 63. These defenses are equitable; if the parties had contemplated the particular contingency, they would have agreed that the contract should be justly modified or terminated thereby. See WALD'S POLLOCK ON CONTRACTS, 525, 536, 543. See also 15 HARV. L. REV. 418; 19 HARV. L. REV. 462. Reasonable fear of bodily harm arising subsequently to the making of the contract also excuses a party from performance. *Lakeman* v. *Pollard*, 43 Me. 463; *Walsh* v. *Fisher*, 102 Wis. 172, 78 N. W. 437; *Sibbery* v. *Connelly*, 22 L. T. R. 174. In a contract that is against public policy, however, the law denies recovery because the tendency of the contract was bad from the outset. *Judd* v. *Harrington*, 139 N. Y. 105, 34 N. E. 790; *Egerton* v. *Brownlow*, 4 H. L. 1. Obviously one who contracts to hold a baby show does no wrong thereby. In the principal case the court should not excuse performance on the ground of a demand by public policy, but because the parties, if they had contemplated the epidemic, would have agreed that such a happening would justly terminate the contract.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO THE CONTRACT — SOLE BENEFICIARY. — The deceased drew up his wife's will. She expressed her dissatisfaction with it in that the plaintiff, her niece, was not amply provided for by it. He promised thereupon that if she would sign the will as it stood, he would leave the plaintiff enough in his testament to make up the difference, and the wife accordingly executed the instrument. Thereafter, when the deceased came to die, it was discovered that his will provided in no way for the plaintiff. *Held*, that she could recover on the promise. *Seaver* v. *Ransom*, Ct. App. (N. Y.) October 1, 1918.

On a contract for the sole benefit of a third party the promisee may not recover more than nominal damages for the promisor's breach. *Burbank* v. *Gould*, 15 Me. 118; *Watson* v. *Kendall*, 20 Wend. 201; *Adams* v. *Union R. R. Co.*, 21 R. I. 134, 137. Justice, therefore, demands that the beneficiary recover, since he alone suffers damage, and the promisor, otherwise, is permitted to retain valuable consideration, given for a promise never performed. The New York courts have been prevented from reaching this conclusion because of the rule laid down by former decisions, limiting the right of action by a beneficiary to cases, where the promisee owed him some duty. *Vrooman* v. *Turner*, 69 N. Y. 280, 283; *Lorillard* v. *Clyde*, 122 N. Y. 498, 25 N. E. 292; *Sullivan* v. *Sullivan*, 161 N. Y. 554, 56 N. E. 116. See 15 HARV. L. REV. 780–82. But to prevent injustice to some extent, the courts went to the length of declaring that a moral duty was sufficient to sustain such an action. *Buchanan* v. *Tilden*, 158 N. Y. 109, 52 N. E. 724; *Matter of Kidd*, 188 N. Y. 274, 80 N. E. 924; *De Cicco* v. *Schweizer*, 221 N. Y. 431, 117 N. E. 807. The principal case refuses to invoke such an absurdity. It virtually permits recovery by any sole beneficiary and disregards completely the restriction imposed by former cases.

DAMAGES — NATURE AND ELEMENTS — COMPOUND INTEREST. — At a partnership settlement the defendant failed to disclose his ownership of certain stocks which were to be shared by the partners. The Supreme Court of Massachusetts awarded damages, with interest from the date of settlement to the date of the bill; and the case was recommitted to the master to ascertain the value of the stock, but the terms of the decree were to be settled before a single justice, who reported the case to the full court on the question whether compound interest may be computed from the date of settlement to the date of filing the bill, with a rest as of the date of filing the bill and interest there-

after to the date of the decree, to prevent the fiduciary from acquiring unjust gain. *Held*, compound interest allowed. *Arnold* v. *Maxwell*, 119 N. E. 776 (Mass.).

Compound interest may be allowed in order to prevent a fiduciary from acquiring unjust gain. *Schiefflin* v. *Steward*, 1 Johns. (N. Y.) 620; *Jennison* v. *Hapgood*, 10 Pick. (Mass.) 77. But the law of the case is as handed down in the prior adjudication of the court; *i.e.*, simple interest from the settlement to the bill. *Arnold* v. *Maxwell*, 223 Mass. 47, 111 N. E. 687. And the court now declares that decision to be the law of the case. Compound interest might have been awarded at the outset, but this decision is inconsistent with itself when it announces a former award of simple interest to be the law of the case and then proceeds to allow compound interest. The court may have been unconsciously invoking the Massachusetts rule that a decree might bear interest. *East Tennessee Land Co.* v. *Leeson*, 185 Mass. 4, 69 N. E. 351. See MASS. R. L. c. 177, § 8. However, the decision is still difficult to explain, since under the Massachusetts rule interest would be computed from the settlement to the bill with interest on that total from the date of the first decree, and not with a rest at the date of the bill. No interest at all would be allowed during the interval between the bill and the first decree.

ELECTIONS — ELECTION CERTIFICATES BINDING TILL DIRECTLY OVERTURNED. — Art. 4, Pt. 3, § 17 of the Maine Constitution provides for a referendum of any statute passed but not yet in force on petition of ten thousand electors filed with the Secretary of State within ninety days after the recess of the legislature. Each petition must be accompanied by a certificate of the city or town clerk stating that all the signatures on the petition are names of electors on the voting list. Within the ninety days a city clerk who had done such certifying wrote to the Secretary of State, saying that he had not ascertained whether all the petitioners had their names on the voting list. *Held*, the names of these petitioners should be counted. *In re Opinion of the Justices*, 103 Atl. 761 (Me.).

It is well settled that a certificate drawn in due form by the proper official is final and binding until it is directly, and not collaterally, attacked. *In re Rothwell*, 44 Mo. App. 215; *State* v. *Kersten*, 118 Wis. 287, 95 N. W. 120; *Ryan* v. *Varga*, 37 Ia. 78; *Ewing* v. *Thompson*, 43 Pa. St. 372; *State* v. *Churchill*, 15 Minn. 455; *Warner* v. *Meyers*, 4 Ore. 72; *Morgan* v. *Quackenbush*, 22 Barb. (N. Y.) 72; *United States* v. *Arredondo*, 6 Pet. (U. S.) 691. Indeed, even the officer issuing the certificate cannot issue a later valid certificate unless definitely allowed a reviewing power by statute. *Bowen* v. *Hixon*, 45 Mo. 340; *Hadley* v. *Mayor of Albany*, 33 N. Y. 603. In the principal case the city clerk might within the ninety days have made a formal cancellation or amendment in accord with facts upon the certificate and petitions. Until he did so, they remained valid. But to prevent a miscarriage of the intent of the constitutional provision the governor or some interested party may attack the certificate directly by *quo warranto* process. *State* v. *Freeholders of Hudson County*, 35 N. J. L. 269; *State* v. *Chosen Freeholders of Camden*, 35 N. J. L. 217; *People* v. *Miller*, 16 Mich. 56; *Atherton* v. *Sherwood*, 15 Minn. 225; *State* v. *Churchill*, 15 Minn. 455; *Warner* v. *Meyers*, 4 Ore. 72. Or it may be attacked by *mandamus* where such procedure is allowed. *State* v. *Peacock*, 15 Neb. 442, 19 N. W. 685; *State* v. *Stearns*, 11 Neb. 104, 7 N. W. 743; *Flanders* v. *Roberts*, 182 Mass. 524, 65 N. E. 902.

EVIDENCE — CORONER'S VERDICT — INDUSTRIAL BOARDS. — In a proceeding before the Illinois Industrial Board to recover compensation under the Workmen's Compensation Act, a coroner's verdict was admitted in evidence to show the circumstances under which the deceased met his death. *Held*,